

# PPAT'S LEGAL RESPONSIBILITY FOR THE CREATION OF EMPTY DEED

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## PPAT'S LEGAL RESPONSIBILITY FOR THE CREATION OF EMPTY DEED

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### Abstrak

Article 53 of the Regulation of the Head of the National Land Agency Number 1 Year 1960, which states that the PPAT deed is made by filling in the complete available deed blanks in accordance with the instructions for filling it. In practice carried out by a small number of PPAT there is a deed that has been prepared in advance, and has had some contents emptied containing agreements or general and standard agreements, which the purpose of which is to facilitate the work of PPAT in terms of administration and in terms of providing services by PPAT to interested parties or faces. The results showed that, Responsibility for authentic deed which is partially substandard empty, because PPAT is a public official who is given the authority to make authentic deed and PPAT has rules that must be obeyed by all PPAT in Indonesia regulated in Government Regulation No. 24, 2016 and the IPPAT Code of Ethics, and the position of PPAT deed which is partially substandard vacant in the event of degradation of PPAT deed even though the PPAT deed is a perfect evidence tool, but in the PPAT certificate can experience degradation of the deed that can not be enforced as an authentic deed, but is considered a deed / handwriting under the hands caused by violation of the provisions of Article 1869 kuhPerdata.

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## I. INTRODUCTION

Land Deed Official (for the next abbreviated PPAT) in carrying out the Profession of providing services to the community should behave in accordance with the applicable rules. PPAT carries out its duties not only for personal benefit, but also for the benefit of the community, and has an obligation to guarantee the correctness of the deeds it made, therefore a PPAT is required to be more sensitive, honest, fair, and transparent in order to ensure the implementation of the objectives and obligations of all parties directly related to the making of an authentic deed.

PPAT Deed as an authentic deed must meet several conditions, namely its form that has been determined by the Law and made by or before the authorized public official in the place where the deed was made. According to Irawan Soerodjo there are three elements of essence to meet the formal requirements of an authentic deed which is also stipulated in Article 1868 of the Civil Code which is also the source of the authenticity of the deed that is, in the form prescribed by the law, made by or

before the General Officer and the deed made by or before the authorized official for it and in the place where the deed was made.<sup>1</sup>

Article 1 paragraph (4) of Government Regulation Number 24 year 2016 concerning Amendment to Government Regulation Number 37 year 1998 concerning Regulation of Office of Land Deed Official determines that "PPAT Deed is a deed made by PPAT as proof of the implementation of certain legal actions concerning land rights or property rights of flat units". According to the forms and ordinances set forth in this Law<sup>13</sup>. The authentic deed in question is an authentic deed in accordance with the formulation of Article 1868 of the Civil Code namely: "An authentic deed is a deed in its form determined by law made by or before the powerful public official for it in the place where the deed was made".

Based on Article 1868 of the Civil Code, PPAT has the authority to make authentic deed. An authentic deed made by PPAT is a deed made concerning an action taken by the parties on a condition or legal action containing a description of the things that occurred and actual events described by the parties and facing PPAT. With the Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning The Office Regulation of Land Deed Officials, ppat's authority in making authentic deed in its application of the deed is able to guarantee certainty, order, and legal protection for all parties concerned.

PPAT as a public official who is given authority attribution by law to make authentic deed must say the oath / promise in advance that PPAT will carry out its duties honestly, thoroughly and impartially and will comply with all current ppat department regulations and to be held and keep the contents of the deed secret in accordance with the provisions of the legislation. This part of the oath is called "beroespeed". PPAT as a public official (openbaar ambtenaar) is also authorized to make authentic deed.

Article 3 letter f of the PPAT code of conduct states that: "work with a sense of responsibility, independence, honesty, and impartiality". The reasons that can be given by PPAT if they refuse to make the deed of the parties are, among others, the reason that causes PPAT to be impartial, such as the existence of blood or semenda relationship with PPAT itself or with the wife / husband, one of the parties does not have the ability to act to commit a legal action or other things that are not allowed by law. Authentic deed basically contains formal truth in accordance with what the parties told PPAT.

In carrying out its duties, a PPAT must adhere to the ppat code of ethics, because without it the dignity and dignity of professionalism will be lost and no longer gain the trust of the public. PPAT's professional code of conduct makes it clear that PPAT is obliged to act honestly, carefully, independently, impartially and safeguard the interests of the parties involved in legal action. PPAT Code of Conduct is all moral rules determined by the PPAT association/organization based on the

<sup>9</sup> Irawan Soerojdo, *Kepastian Hukum Hak atas Tanah di Indonesia*, Arkola, Surabaya, 2003, hlm. 148

Decree of the Minister of Justice dated April 13, 1989 Number C2-3281.HT.01.03.Th.89 governing the prevailing and/or mandatory adhered to by every member of the association carrying out the duties of the PPAT Office. In carrying out its duties properly as a public servant, a professional must carry out his/her position by aligning his/her skills by upholding the professional code of ethics. In order for the professional code of conduct to function properly, there are at least two conditions that must be met:

1. The code of conduct must be created by the profession itself, the Code of conduct will not be effective if it is taken for granted from above, from government agencies or other agencies, because it will not be imbued by the ideals and values that live in the profession itself.
2. In order for the code of conduct to succeed properly is that its implementation is supervised continuously.<sup>2</sup>

In addition, PPAT as a public official must be sensitive, responsive, have a sharpness of thought and be able to provide proper analysis of every legal phenomenon and social phenomenon that arises so that it will foster courage in taking appropriate action. The courage referred to here is the courage to do the right legal action in accordance with the prevailing laws and regulations through the deed he made and expressly reject the making of a deed contrary to the law, morals and ethics.<sup>3</sup> "Professional ethics are norms, terms and conditions that must be met by a group of people referred to as professionals".<sup>4</sup>

The implementation of the responsibility of the position owned by a PPAT is not carried out, it can result in the deed being made null and void, canceled by the parties and or the deed is only a means of proving the deed under the hands. Because the deed is null and void, it becomes a reason for the parties who suffer losses to demand reimbursement, compensation to PPAT.

The implementation of the responsibility of the position owned by a PPAT is not carried out, it can result in the deed being made null and void, canceled by the parties and or the deed is only a means of proving the deed under the hands. Because the deed is null and void, it becomes a reason for the parties who suffer losses to demand reimbursement, compensation to PPAT.

In practice conducted by PPAT / notary public there is a deed that has been prepared in advance by PPAT / notary, and has had some contents and emptied containing agreements or general and standard perikan, which the purpose of which is to facilitate the work of PPAT / notary in terms of administration and in terms of providing services by PPAT / notary to the parties or interested parties. The deed referred to here is a deed in the form of an empty blangko or more often called a

<sup>2</sup> Bertens, *Etika*, Cet. 4, Gramedia Pustaka Utama, Jakarta, 2017, hlm. 282-283.

<sup>3</sup> Wawan Setiawan, *Sikap Profesionalisme Notaris Dalam Pembuatan Akta Otentik*, Media Notariat, Edisi Mei dan Juni 2004, hlm. 25

<sup>4</sup> K. Bertens, *Etika*, *Loc it*, hlm. 5-6

Deed blanko which is partly empty. Against PPAT / notary who submitted a deed in the form of Blanko Akta which part of the contents are still empty. to be signed in connection.

Based on the background description mentioned above, there needs to be a formulation of problems to facilitate further discussion. The problem that will be raised is the legal basis for signing an empty blanko so as to cause irregularities and losses of one party.

## II. RESEARCH METHODS

This research is a type of normative juridical research that aims to examine legal systematics, legal synchronization, legal history, and legal comparison.<sup>5</sup> This research approach uses approaches, laws, conceptualls, and cases. This study uses primary and secondary legal materials. Data collection instruments are carried out by conducting structured interviews and unstructured interviews as well as discussions. The data is collected through literature research and supported by field research. Data is analyzed by qualitative analysis.

## III. RESEARCH AND DISCUSSION RESULTS

### 3.1. PPAT's Responsibility in The Making of a Deed That Is Partially Empty

Each profession certainly has a different professional ethic to other professions. But there are some common professional ethics, one of which is responsibility.<sup>6</sup> In this case PPAT also applies. PPAT is a civil servant whose task is to issue certain deed, especially the deed of transfer of land rights based on PP No. 37 of 1998, PPAT is responsible for administrative, civil, and criminal crimes. The legal responsibility of PPAT for the Deed is as follows:<sup>7</sup>

#### 3.1.1 Administrative Responsibility

Administrative errors or administrative errors made by PPAT in conducting various land registration and transfer activities will inevitably result in legal consequences that can be held accountable by PPAT. According to Kranenburg and Vegtig, there are two (two) theories about civil servant accountability, namely:<sup>8</sup>

1. **Fautes Personalles theory**, which is the theory that losses to third parties are charged to officials who because of their actions have caused harm. In this theory the burden of responsibility is directed at human beings as individuals.
2. **Fautes de Services Theory**, which is a theory stating that losses to third parties are charged to the agency of the official concerned. According to this theory, responsibility is imposed on

<sup>5</sup> Zainuddin Ali, *Metode Penelitian Hukum*, Cet. Ke-2, Sinar Grafika, Jakarta, 2010, hlm. 30.

<sup>6</sup> Sultoni, Imam Gunawan, Dika Novita Sari, "Pengaruh Etika Profesional Terhadap Pembentukan Karakter Mahasiswa", *JAMP: Jurnal Administrasi dan Manajemen Pendidikan*, Vol. I, No. 3 September 2018, Malang: Universitas Negeri Malang, 2018, hlm. 280

<sup>7</sup> I Gusti Bagus Yoga Prawira, "Tanggung Jawab PPAT Terhadap Akta Jual Beli Tanah", *Jurnal IUS*, Vol. IV, No. 1, April 2016, Mataram, Magister Kenotariatan, Universitas Mataram, 2016, hlm. 69-77.

<sup>8</sup> Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, 2006, hlm. 365.

the office. In the case of its application, the losses incurred are also adjusted whether the mistake made is a heavy mistake or a minor error where the weight and lightness of an error implies a responsibility to be borne.

Based on the power of PPAT to perform authentic acts, a PPAT must always be careful or careful of a case, considering that a PPAT has theoretical and practical abilities. So if PPAT makes a charter and makes the charter legally incorrect, then it can be said as an abuse of authority, because the PPAT in question recognizes that every PPAT as a legally authorized official is obliged to handle matters related to its authority and not allegations of abuse of power can be excluded. This state of abuse of power is increasingly evident when one or more parties experience adverse elements arising when PPAT instruments are revoked as a result of an unlawful law.

PPAT's responsibility for the loopholes, omissions, or omissions of PPAT in the deed of sale and purchase that does not meet the material and formal requirements related to the procedures for the implementation of the deed of sale can be borne by the party who feels violated and request compensation that is not limited to administrative sanctions. Related to PPAT error, it is necessary to check in advance whether the error is caused by delay or illegal action.<sup>9</sup>

PPAT's responsibility relates to negligence, or willfulness in the making of a deed that deviates from the formal requirements and material requirements for the procedures for the making of PPAT deed, "ppat may be subject to administrative sanctions. Deviations from the formil and materil requirements are including gross violations by PPAT that can be subject to sanctions of dishonrespect from office by the Head of the Indonesian National Land Agency which in Article 28 of the BPN Perka No. 1 Year 2006", states that:

- (1) PPAT is honorably discharged from its position by the Head of the Agency because:
  - a. own request;
  - b. no longer able to carry out duties due to the state of the body's health or mental health, after it is declared by the authorized medical examiner team at the request of the Head of the Agency or appointed officials;
  - c. commit minor violations of prohibitions or obligations as PPAT;
  - d. appointed as civil servants or members of the TNI / POLRI".
- (2) PPAT is dishonorably discharged from its position by the Head of the Agency, because:
  - a. commit serious violations of prohibitions or obligations as PPAT;
  - b. sentenced to imprisonment for committing a crime of criminal acts that are threatened with imprisonment or imprisonment of maximum 5 (five) years or more severe based on the decision of a court that already has permanent legal force;
  - c. violate the code of professional ethics".
- (3) Minor violations as referred to in paragraph 16 ) letter c include:
  - a. collecting service money exceeds the provisions of the laws and regulations;
  - b. within 2 (two) months after the end of the leave does not carry out its duties again as referred to in Article 42 paragraph (5);
  - c. does not submit monthly reports on the deed he/she made as referred to in Article 62;

<sup>9</sup>Fajriatul Tivani Haridhy, Ilyas Ismail, Darmawan, "Perlindungan Hukum Bagi Pembeli Akibat Kelalaian PPAT dalam Pembuatan Akta Jual Beli", Jurnal IUS, Vol. 7 No. 2, Agustus 2019, Banda Aceh: Magister Kenotariatan, Fakultas Hukum, Universitas Syiah Kuala, 2019, hlm. 327

- d. concurrent positions as referred to in Article 30 paragraph (1); Dan
  - e. others stipulated by the Head of the Agency".
- (4) Serious violations as referred to in paragraph (2) letter a, among others:
- a. help to make malicious claims that result in land disputes or conflicts.
  - b. to make deed as a malicious agreement resulting in land disputes or conflicts;
  - c. make deed outside its working area except as intended in Article 4 and Article 6 paragraph (3);
  - d. provide incorrect information in the deed resulting in land disputes or conflicts;
  - e. open a branch office or representative or other form located outside and or within its working area as referred to in Article 46;
  - f. violate the oath of office as PPAT;
  - g. the making of PPAT deed conducted, while it is known by the PPAT concerned that the authorities are doing legal acts or their power of attorney in accordance with the laws and regulations are not present before him;
  - h. the making of a deed concerning the right to land or property rights to the Unit of Flats which by the PPAT concerned is known to still be in dispute resulting in the face of the concerned is not entitled to perform for legal action as evidenced by the deed;
  - i. PPAT does not read the deed in front of the parties or parties who have not or are not authorized to perform the act in accordance with the deed made;
  - j. PPAT makes a deed in front of the parties who are not authorized to perform legal actions in accordance with the deed made;
  - k. PPAT makes a deed within the period of sanction of temporary dismissal or in a state of leave;
  - l. others stipulated by the Head of the Agency".

In Article 10 of Government Regulation No. 24 of 2016 concerning PPAT Position Provisions, which are also stipulated in Article 6 paragraph 1 of the IPPAT Code of Ethics, namely that members who violate the Code of Ethics may be subject to sanctions in the form of:

1. Reprimand;
2. Warning;
3. Schorsing (temporary suspension) of IPPAT membership;
4. Onzetting (termination) of IPPAT membership;
5. Disrespectful dismissal of IPPAT membership.

The dropping of sanctions is adjusted to the quantity and quality of violations committed by the member (Article 6 paragraph (2) of the PPAT Code of Ethics). The development and supervision of the implementation of PPAT duties is carried out by the Head of the National Land Agency, in accordance with the Regulation of the Head of the National Land Agency Number 1 Year 2006 concerning the Provisions on the Implementation of Government Regulation No. 37 of 1998 concerning the Regulation of the Office of the Land Deed Official concerning Development and Supervision in Article 66 paragraph (3) namely, the development and supervision of PPAT conducted by the Head of the Land Office, as follows.

1. Assist in conveying and explaining land policies and regulations as well as technical guidelines for the implementation of PPAT duties that have been determined by the Head of Agency and legislation;

2. check the deed made by PPAT and notify in writing to the PPAT concerned if it is found that the deed is not eligible to be used as the basis for registration of its rights;
3. conduct an examination of the implementation of PPAT operational obligations.

The role of BPN as a partner that oversees ppat responsibilities is very important here. For example, socialization in PPAT is one form of improving the quality of service and responsibility of PPAT itself, this form of supervision is usually carried out on the basis of monthly reports sent by PPAT to the State Office every month depending on the region of work. Regular monitoring is also carried out directly on site or directly at the PPAT office, e.g. B. regarding the suitability of PPAT nameplates, archives, documents, etc.<sup>10</sup>

Sanctions that can be threatening, PPAT and resulting in documents not meeting the formal and material requirements of ppat procedures or procedures for document making are sanctions that lead to the dishonanceful dismissal of his position and the imposition of administrative sanctions.

### 3.1.2 Civil Liability

PPAT's responsibility for loopholes, omissions or deliberateness in the making of the deed deviates from the formal requirements and the basic requirements of PPAT deed making do not preclude the parties from feeling violated and demanded for compensation.

With regard to the error (beroepsfout) of PPAT, it must be checked in what form the error occurred, whether it was a delay or unlawful action (Onrechtmatige Daad). The general belief is that default occurs if preceded by an agreement, while violations are called illegal acts when not related to the agreement (Onrechtmatige Daad).

In determining an act can be said to be an unlawful act of Onrechtmatige Daad, 4 conditions are required:

- a. Contrary to the offender's legal obligations;
- b. Contrary to the subjective rights of others;
- c. Contrary to decency;
- d. Contrary to propriety, thoroughness and prudence.<sup>11</sup>

The four criteria are not cumulatively required for illegal acts, but as an alternative, the fulfillment of one of the two criteria is sufficient to qualify for illegal acts.<sup>12</sup> Civil law sanctions against PPAT for unlawful acts (Onrechtmatige Daad) are acts that cause harm, and normatively those acts are subject to the provisions of Article 1365 of the Civil Code, which reads "Any unlawful act,

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<sup>10</sup>Roy Mubarak, S.E., M.M., *Hasil Wawancara*, Kepala Sub Seksi Pemeliharaan Data Hak Atas Tanah dan Pembinaan PPAT Kantor Pertanahan Kota Banda Aceh, pada tanggal 22 November 2020

<sup>11</sup>Rosa Agustina, *Perbuatan Melawan Hukum*, Pascasarjana Fakultas Hukum, Universitas Indonesia, Depok, 2003, hlm. 117.

<sup>12</sup>Gunawan Widjaja & Kartini Mulyadi, *Perikatan yang lahir dari Undang-Undang*, Raja Grafindo, Jakarta, 2003, hlm. 146-147.



which inflicts harm on another person, obliges the person who for his or her mistake to issue the loss, indemnity".

While J.H. Nieuwenhuis stated, "the responsibility arises because of an unlawful act or *Onrechtmatige Daad* and is *Oorzaak* the cause of loss, while the offender is called *Schuld*, then the person must be liable for the loss".<sup>13</sup>

However, if in the implementation of ppat duties and positions there is an obligation to produce authentic documents containing the authority to correct evidence containing legal errors, then the court decision will be declared inauthentic because it is formal and formal. The material requirements for the procedures for the preparation of PPAT documents are not met, so the authenticity of the document is not only fulfilled at hand or canceled and detrimental. Then the incident violates the legal obligation of PPAT and PPAT to be responsible for the loss.

This is not only contrary to PPAT's legal obligations, but is also caused by violations of the subjective rights of others. after Meyers, as quoted by Rachman Setiawan, stated that "Subjective Rights refer to a right granted by law to a person specifically to protect his interests. In this case the case of making PPAT deed containing legal defects will cause difficulties for the client or the person entitled to the deed to exercise his/her rights. The right of the client guaranteed by law can confirm as entitled to the deed is the right to use the deed as a means of proof of his legitimate rights, so that with the evidence to postulate his rights and even deny the rights of others. Thus, if the PPAT deed made as the basis for the transfer of land rights is declared void by a court decision and results in the PPAT client not obtaining the right to an authentic deed or unable to use the deed as the role and function of an authentic deed so that the client who should be the rights holder becomes unable to exercise his rights then the PPAT concerned is responsible for the losses incurred".

Compensation for unlawful acts is a form of compensation for individuals who have committed wrong deeds by the parties they suffer. Compensation by mistake, no deal. While the form of compensation known in civil law there are 2 (two) kinds, namely:<sup>14</sup>

1. General indemnity is compensation that applies to all cases due to unlawful acts in the form of fees, losses and interest. Indemnity is generally regulated in Article 1243 to Article 1252 of the Civil Code.
2. Special indemnity that can only arise from certain alliances.

Unlawful forms of compensation differ from late payment compensation, and there may be compensation in forms other than money. With respect to other forms of compensation, this can be seen taking into account the fully formulated Hoge Read.

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<sup>13</sup>Marthalena Pohan, *Tanggung Gugat Advokat, Dokter dan Notaris*, Bina Ilmu, Surabaya, 1985, hlm. 21.

<sup>14</sup>Munir Fuady, *Perbuatan Melawan Hukum, Pendekatan Kontemporer*, Cet. Ke-2, PT. Citra Aditya Bakti, Bandung, 2005, hlm. 136.

Perpetrators of unlawful acts, may be penalized to pay a certain amount of money in lieu of losses incurred to the injured party, but if the aggrieved party demands compensation in other forms and the judge considers it an appropriate form of compensation, then the perpetrator can be punished for performing other achievements for the benefit of the aggrieved party suitable to eliminate the losses suffered.<sup>15</sup>

### 3.1.3 Criminal Liability

The imposition of criminal sanctions against PPAT can be done as long as PPAT has compiled a fake letter or document that is considered a criminal act. Material and formal requirements in the process of making PPAT documents are formal aspects that must be considered when doing land sale and purchase deed in connection with PPAT levies. The author argues that deviations from the substantive and formal provisions of PPAT procedures in the preparation of documents must be caused by restrictions on formal aspects stipulated in legislation relating to PPAT. In other words, if a PPAT is formally violated, civil and administrative sanctions may be imposed depending on the type of violation or sanction in the IPPAT Code of Ethics, so that the classification of violations of the formal aspects of a criminal act is an act that has no legal basis cannot be taken into account.

Habib Adjie stated that, the formal aspects of a PPAT instrument can be used as a basis or impediment in the imposition of criminal sanctions against PPAT, if:<sup>16</sup>

1. The formal aspects are proven deliberately (consciously and consciously and planned by the PPAT concerned) that the deed he made is used as a tool to commit a criminal act.
2. PPAT knowingly and deliberately together with the parties concerned take a legal action which it is known to be unlawful.

The imposition of criminal sanctions against PPAT can be carried out as long as the specified limit value is violated. This means that the IPPAT Code of Conduct must not only be in accordance with the words that violate the laws of PPAT, but also in accordance with the wording in the Criminal Code.

According to Habib Adjie, with regard to criminal cases related to aspects of notarial deed formil / PPAT at the time of submission of authentic deed, the following provisions apply:<sup>17</sup>

1. Make fake letters / forged and use fake letters / forged (Article 263 paragraph (1) and (2) Criminal Code);
2. Forgery of authentic deed (Article 264 of the Criminal Code);
3. To include false information in authentic deed (Article 266 of the Criminal Code);

<sup>15</sup>Rachmat Setiawan, *Op.Cit.*, hlm. 70.

<sup>16</sup>Habib Adjie, *Sanksi Perdata dan Administrasi terhadap Notaris sebagai Pejabat Publik, Cet. ke-2*, Refika Aditama, Bandung, 2009, hlm. 124.

<sup>17</sup>Habib Adjie, *Kebatalan dan Pembatalan Akta Notaris*, PT. Refika Aditama, Bandung, 2013, hlm.67.

4. To do, participate in doing (Article 55 Jo Article 263 paragraph (1) and (2) Criminal Code or Article 266 of the Criminal Code);
5. Assist in making fake/or forged letters and using fake/forged letters (Article 56 paragraph (1) and (2) Jo Article 263 paragraph (1) and (2) Criminal Code or Article 266 of the Criminal Code).

Intentional or "dolus according to criminal law is an act that is insyafi, understood and known as such, so that there is no element of misdeed or misunderstanding. And Allah is All-Hearer, All-Knower.

Moeljatno argues that, "intentionality (dolus) according to criminal law is an act that is consciously committed by opposing the prohibition, while omission or negligence (culpa) is the perpetrator's lack of attention to the object by not realizing that the result is a prohibited circumstance, so that the error in the form of omission is essentially the same as intentionality, only different gradation. According to Wirjono Prodjodikoro, intentionality is very important in criminal because most crimes have an element of intentionality or opzet, not a culpa element. This is because usually the person who deserves the criminal punishment is the one who did something intentionally".<sup>18</sup>

Violation of Article 266 paragraph (1) of the Criminal Code, "can only be alleged to PPAT while PPAT knows that the information requested by the parties to be included in the deed is incorrect or as if the information is in accordance with the truth and if it can cause harm, but PPAT is still willing to make the deed, then PPAT in this case can be ensnared to have committed a crime article 266 paragraph (1) of the Criminal Code jo Article 56 paragraph (1) of the Criminal Code , with the maximum threat of criminality that can be imposed for the act of assisting the crime of Article 266 paragraph (1) of the Criminal Code minus one-third of Article 57 paragraph (1) of the Criminal Code".

In this context, the author argues that PPAT cannot be held accountable for criminal acts if PPAT has fulfilled its obligations in accordance with the procedures stipulated in the relevant laws and regulations. "This is legitimized in Article 266 of the Criminal Code, where a Notary/PPAT cannot be criminally charged on the basis of Article 266 if he/she has performed his/her duties properly. Article 266 of the Criminal Code shows that the position of a PPAT is a manus ministra and in criminal law the person who is told cannot be held criminally liable for his/her actions". On the other hand, a PPAT can be held criminally responsible for the deed he made on the basis of Article 263 and 264 of the Criminal Code if:

1. PPAT recognizes that when the person facing him/her to make an authentic deed, whether in the form of an alliance for sale or other alliance, the person cannot meet the legal

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<sup>18</sup>Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia Edisi ke Tiga*, PT. Refika Aditama, Bandung, 2003 hlm. 65-66.

requirements of an alliance based on the prevailing laws and regulations. However, PPAT did not heed the terms of the agreement and still made the deed as requested by the court.

2. PPAT does not heed and still make an authentic deed even though he/she knows that at the time the person facing him/her to make the authentic deed has given incorrect information to be included in the deed.
3. The author argues to avoid being entangled in the criminal act of <sup>13</sup> Article 266 paragraph (1) of the Criminal Code, preferably from <sup>13</sup> the beginning <sup>13</sup> the accusers express their intention to conduct legal proceedings by first reminding ppat that:
  - a. If you want to state in the deed of price other than the actual price of the face do not ever tell the Notary / PPAT or employees of notary office / PPAT that the actual price is different from the price that you want to be listed in the deed.
  - b. If the facer has already informed of the price difference, notary public should refuse to make a deed for the facering.
  - c. Inform the facer that if in the future it is known that the price stated in the deed is incorrect, it is possible that the concerned is not ensnared in <sup>13</sup> Article 266 paragraph (1) of the Criminal Code".

According to <sup>26</sup> the results of an interview with Notary Novana Octa Saputra S.H., M.Kn. he stated that, PPAT has full responsibility for authentic deed which is partially empty, because PPAT is a public official who is authorized to make authentic deed and PPAT has rules that must be obeyed by all PPAT in Indonesia regulated in Government Regulation No. 24 of 2016 and IPPAT Code of Ethics.<sup>19</sup>

The position of PPAT deed which is partially substansinya empty in the event of degradation of PPAT deed even though the PPAT deed is a perfect evidence tool, but in the ppat certificate can experience degradation of the deed that can not be enforced <sup>3</sup> as an authentic deed, but is considered a deed / handwriting under the hands caused by a violation of the provisions of Article 1869 kuhPerdata which states that, "The letter as the main evidence in civil procedure law can be classified in two groups namely Authentic Deed and Deed Under Hand. A deed is a letter given a signature, which contains events that form the basis of a right or alliance made from the beginning deliberately for proof. So to be classified in the sense of deed, then the letter must be signed".<sup>20</sup>

Therefore, a deed is made under the hands of when:

1. In the event that a legal action by law is not required to be set forth in an authentic deed.

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<sup>19</sup> Novana Octa Saputra S.H., M.Kn. *Hasil Wawancara*, dengan Notaris/PPAT Aceh Besar, pada tanggal 24 November 2020

<sup>20</sup> Novana Octa Saputra S.H., M.Kn. *Hasil Wawancara*, dengan Notaris/PPAT Aceh Besar, pada tanggal 24 November 2020

2. If the deed loses its intensity due to the unqualified formal requirements in Article 1869 of the Civil Code.

<sup>25</sup> In the court's decision on the case that occurred to Masri Husen, a Notary / PPAT in Bandung based on the Decision of the District Court No. 45 / Pdt.G / 2016 / PN. BDG jo Decision of the High Court of West Java No. 570/Pdt/2016/PT. BDG was charged with unlawful acts for handing over an empty Blangko Akta Jual Beli to be signed by the parties as his clients, namely Iskandar and Uma Maryono, but then without the knowledge of the parties, the parties in the deed had changed and not in accordance with the truth at the time the deed with blanks was signed. Therefore, this deed of sale and purchase has manifestly been perverted by Masri Husen.

Then the <sup>4</sup>second case, namely the signing of PPAT deed in an empty blangko conducted by Notary / PPAT in the making of Deed of Sale and Purchase of three areas of land owned by Mr. H. Subarda Midjaja made before Notary / PPAT Yeti Nurhayati, and the deed was made unilaterally by bringing in PPAT employees, who brought empty blangko and asked Mr. H. Subarda Midjaja who at that time was in the Community Institution (LP) to sign an empty blangko PPAT that should be made into a Deed of Debt Binding Receivables, but the empty blangko PPAT was made into a Deed of Sale. In this case Notary / PPAT Yeti Nurhayati, played a role in making and ratifying the empty Blangko Akta Jual Beli that had been signed by both parties previously without the knowledge of Mr. H. Subarda Midjaja. Based on this, Mr. H. Subarda Midjaja filed a civil lawsuit against the parties, including Notary / PPAT Yeti Nurhayati as PPAT because he was not responsible for <sup>4</sup>making the Deed of Sale and Purchase of the Land so as to cause harm, where he was defeated in the Court of First Level Bandung, namely in The Verdict No. 483 / Pdt / g / 2013 / PN.Bdg, and then the verdict was overturned by a High Court judge in Decision No. 289 / Pdt / 2015 / PT. BDG, and the Supreme Court that has been inkracht based on the Supreme Court Decision No. 1201/K/Pdt/2016.

Analysis of the case above that, PPAT can be sanctioned by a code of ethics that is a witness temporary dismissal until permanent dismissal. The parties may report PPAT to the MPD in addition to filing a lawsuit to the court. The violations and dismissals will then be examined by the PPAT Regional Supervisory Panel (MPD) which <sup>1</sup>will hold a hearing to examine the case regarding ppat negligence. The dismissal was determined by the Head of the Land Agency of the Republic of Indonesia, but the PPAT that became the object in this study was not subject to sanctions under the code of conduct".

Legal construction used in civil liability is judged on the basis of <sup>4</sup>substantive truth of the actions committed by PPAT, namely the construction of unlawful acts (Article 1365 of the Civil Code). "So-called unlawful acts have both active and passive properties. Active in the sense of committing an act that causes harm to the other party, then the act against the law is an active act.

Passive in the sense of not committing a particular deed or a necessity, then the other party can suffer a loss".<sup>21</sup>

However, "the cancellation of ppat deed through a court decision, not only because of the result of error or negligence of PPAT alone in making the deed. But the cancellation of ppat deed can also be caused by the error or negligence of the parties who bind themselves in the deed, so that by any error or negligence causes a lawsuit from one of the parties. In the civil process, it is not uncommon for a PPAT to be in a position as a defendant given as a forced effort, because in the deed, especially the Partij Acte which later became a means of evidence for civil cases, PPAT is not involved even prohibited by law from engaging in a legal action as described in the deed he inaugurated. PPAT involvement is only limited to formulating the legal actions of the parties into the deed and then inaugurate the deed. The forced sitting of PPAT as a defendant is an attempt to force PPAT to make information about its deed which is now a means of evidence in the judicial process".<sup>22</sup>

Matters that harm customers, then PPAT, are subject to criminal, administrative and civil sanctions. However, if the customer is to blame, PPAT cannot be held accountable because PPAT cannot be held legally accountable. PPAT records or only displays legal actions committed by the parties in the deed. PPAT land transfer must ensure the accuracy of land rights (land rights) and the skills and power of those who transfer and receive land transfer. Therefore, PPAT's legal responsibility to its customers is limited, so PPAT also gets legal protection.<sup>23</sup>

### 3.2. Legal Position of PPAT Deed Partially Substantively Empty

According to Habib Adjie Akta can be said to qualify as an authentic deed if the deeds made by or before the PPAT are in accordance with the established form. In this case, the form of notarial deed shall be regulated based on the provisions of the laws and regulations, namely as follows:

(1) Each Deed consists of:

- a. the beginning of the Deed or the head of the Deed;
- b. Deed body;
- c. end or closing of Deed.

(2) The beginning of the Deed or the head of the Deed shall contain:

- a. title of Deed;
- b. Deed number;

<sup>21</sup> Lidya Christina Wardhani, " Tanggung Jawab Notaris/PPAT terhadap Akta yang Dibatalkan oleh Pengadilan", *Jurnal Lex Renaissance*, Vol. 2, No. 1, Januari 2017, Yogyakarta: Magister Kenotariatan, Fakultas Hukum, Universitas Islam Indonesia, 2017, hlm. 58

<sup>22</sup> Djoko Sukisno, "Pengambilan Fotocopy Minuta Akta dan Pemanggilan Notaris", *Jurnal Mimbar Hukum*, Vol. 20, No. 1, 2008, Yogyakarta: Fakultas Hukum, Universitas Gadjah Mada, 2008, hlm. 52

<sup>23</sup> Desny Iskasari, *Pembatalan Akta Pejabat Pembuat Akta Tanah (PPAT) Dengan Putusan Pengadilan (Studi Kasus di Pengadilan Tinggi Semarang)*, Naskah Publikasi, Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta, 2012, hlm. 10-11

- 1 c. hours, days, dates, months, and years;
        - d. full name and place of notary public.
- (3) The Deed Body contains:
  - a. full name, place and date of birth, nationality, occupation, position, position, residence of the confronters and/or people they represent;
  - b. information on the position of the face-to-face action;
  - 3 c. the contents of the Deed which is the will and desire of the interested party; Dan
  - d. full name, place and date of birth, as well as the occupation, position, position, and residence of each witness identification.
- (4) The end or closing of the Deed contains:
  - a. description of the reading of the Deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7)
  - b. description of the signing and place of signing or translation of the Deed if any;
  - c. the full name, place and date of birth, occupation, position, position, and residence of each witness of the Act;
  - d. description of the absence of changes that occur in the making of the Deed or a description of changes that can be in the form of addition, strikethr or replacement and the number of changes.
- (5) The Deed of Substitute Notary and Notary Public Official, in addition to containing the provisions as referred to in paragraphs (2), (3), and (4), also contains the number and date of appointment determination, as well as the official who appointed it".

4 Ppat Deed as evidence of certain legal actions regarding land rights or Property Rights of Flats Units, which will be used as the basis for the registration of changes in land registration data resulting from the legal action. The legal action consists of buying and selling; exchange; grants; income into the company (inbren);p share of joint rights; granting of Building Rights / Usage Rights to Property Rights; granting of Dependent Rights; granting power of attorney to impose dependent rights.<sup>24</sup>

In theory, legal action is divided into 2 (two) parts, namely unilateral and double legal actions (two parties). Unilateral legal action requires only the will and declaration of will to cause legal repercussions from one subject only. Furthermore, for a double act of law (two parties) requires the will and declaration of will of at least two legal subjects addressed to the same legal consequences. The double legal action (two parties) creates rights and obligations for both parties (reciprocity). Including the act of double law (two parties) is an agreement. The agreement referred to in Article

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<sup>24</sup> Pasal 2 Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.

1313 of the Civil Code (BW) is, "An agreement is an act in which one or more person binds himself to one or more others".

In principle agreements are formed consensually (agreements), not formal. And Allah is All-Mighty, All-Wise. The agreement binds the parties who made it. In making an agreement, the parties do something concrete. The agreement which is a legal action in the field of land which is the authority of PPAT is poured into the form of deed, however, the format of the deed has been standardized by the Regulation of the Head of the National Land Agency Number 8 Year 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 Year 1997 concerning the Provisions on the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration. So that the agreement is exneration (standard agreement). If PPAT does not follow the format of the deed that has been determined by the National Land Agency, then the Head of the Land Office rejects the registration of the PPAT deed as evidence of a certain legal action regarding the right to land or property rights of the Flats Unit, which will serve as the basis for the registration of changes in land registration data caused by the legal action.

PPAT practice of making deed only fills the provisions in the format of the deed that has been determined (standardized) by the National Land Agency. Whereas ppat deed is the deed of the parties (partij acte) that is there are parties who make it in front of PPAT. So it should pour the will of the parties related to land as long as it does not violate the law, public order and decency as is the case in the making of the deed of the parties to the Notary.

Thus, legal action in the form of such agreements becomes important because the rule of law in the field of private law is intended to regulate relations between citizens with each other, it becomes very important that there is a guarantee of legal certainty. Legal certainty is the protection of arbitrary measures, which means that a person will be able to obtain something expected under certain circumstances. The public expects legal certainty, because with the legal certainty of the community will be more orderly. Law is tasked with creating legal certainty aimed at public order.

In connection with the above, with the standardized deed of PPAT by state officials / state administration (Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency) Regulation of the Head of the National Land Agency Number 8 Year 2012 concerning Amendments to the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 Year 1997 concerning the Provisions on the Implementation of Government Regulation No. 24 year 1997 on Land Registration, means the State Official (Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency) participated or intervened in determining certain legal actions in the field of land that the legal action, even though the State Official / State Administration does not have the authority to participate in determining the act of land law which is the authority of PPAT in the making of its deed. Theoretically, if the government in acting in its



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quality as a government, then only public law applies, if the government acts not in the quality of the government, then the private law is applicable.

Related to that, it is clear that the form of PPAT deed is not an authentic deed because the provision of authenticity of the deed is regulated in Article 1868 of the Civil Code (BW) with 3 (three) elements that must be met cumulatively, not alternatively, namely the first element, regarding the form determined by law; the second element, made by or in the presence of the public servants who are in charge of it; and the third element, in the place where the deed was made (Eene authentieke acte is de zoodanie welke in de wettelijke vorm is verleden, door of ten overstaan van openbare ambtenaren die daartoe bevoegd zijn ten plaatse alwaar zulks is geschied). The first element mentioned that the authentic deed of its form is determined by law. Not by the lower regulations of the law.

However, If the word wettelijke is interpreted as legislation, then the PPAT deed is also not an authentic deed because the provisions of the PPAT deed form are determined in the form of Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 Year 1997 concerning the Implementation Provisions of Government Regulation Number 24 Year 1997 concerning the Registration of juncto Regulation of the Head of the National Land Agency Number 8 Year 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 Year 1997 concerning the Implementation Provisions of Government Regulation No. 24 of 1997 concerning Land Registration of the Regulation of the Minister of Agrarian State / Head of the National Land Agency is a policy regulation in the framework of the implementation of government affairs and not legislation.

#### IV. CONCLUSION

PPAT's responsibility for matters that harm the face, criminal, administrative and civil sanctions. However, if the front-up is to blame, PPAT cannot be held accountable because PPAT cannot be held legally accountable. PPAT records or only displays legal actions committed by the parties in the deed. PPAT land transfer must ensure the accuracy of land rights (land rights) and the skills and power of those who transfer and receive land transfer. Therefore, PPAT's legal responsibility for its dealings is limited, so PPAT also gets legal protection. It is expected that PPAT in carrying out its responsibility to make a deed, must uphold what is already stated in the PPAT Office Regulation, IPPAT Code of Ethics, and Government Regulation on Land Registration in order to achieve legal certainty for the interested parties and PPAT itself in order to remain protected from losses and all forms of sanctions applied in a particular legislation.

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